

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**JASON SIMMONS,**  
**Plaintiff,**

**v.**

**RAY JACKSON, et al.,**  
**Defendants.**

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**No. 3:15-CV-01700-D**

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION**  
**OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b), the district court has referred Defendant Texas Medical Board's Motion to Dismiss [ECF No. 134] for determination and/or recommendation. *See* Order of Reference [ECF No. 136]. For the following reasons, the undersigned recommends the district court DENY without prejudice as moot Defendant's Motion to Dismiss [ECF No. 134].

**Background**

On October 3, 2016, Defendant Texas Medical Board ("TMB") filed its Motion to Dismiss [ECF No. 134]. On January 10, 2017, Plaintiff filed his Fourth Amended Complaint [ECF No. 171] which is now the live pleading in this case. Plaintiff was ordered by the district court to file an amended complaint in compliance with Fed. R. Civ. P. 8(a), 8(d)(1), 9(b), and 10(b). *See* Order 1 [ECF No. 168]. Even assuming Defendant's motion — which is addressed to Plaintiff's Third Amended Complaint — has merit, Plaintiff has superseded that pleading by filing his Fourth Amended Complaint. Additionally, at the time of its motion TMB did not have the benefit of responding to a complaint in compliance with the Federal Rules of Civil Procedure. *See, e.g., Mangum v. United Parcel Servs.*, No. 3:09-CV-0385-D, 2009 WL 2700217, at \*1 (N.D.Tex. Aug. 26, 2009) (denying as moot motion to dismiss after plaintiff filed amended complaint).<sup>1</sup>

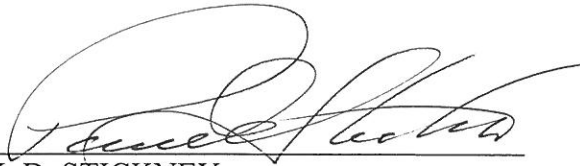
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<sup>1</sup> The Court suggests no view on the merits of the Fourth Amended Complaint or whether it is subject to dismissal under the Federal Rules of Civil Procedure.

**RECOMMENDATION**

In light of the filing of Plaintiff's Fourth Amended Complaint, the undersigned respectfully recommends that Defendant Texas Medical Board's Motion to Dismiss [ECF No. 134] be DENIED without prejudice as moot.

SO RECOMMENDED, this 24 day of January, 2017.

  
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PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND  
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk shall serve a true copy of these findings, conclusions, and recommendation on the parties. Pursuant to Title 28, United States Code, Section 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must serve and file written objections within fourteen days after service of the findings, conclusions, and recommendation. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory, or general objections. A party's failure to file such written objections to these proposed findings, conclusions, and recommendation shall bar that party from a *de novo* determination by the District Court. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Additionally, any failure to file written objections to the proposed findings, conclusions, and recommendation within fourteen days after service shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).